UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Alexander Medvinsky, et al.	GROUP ART UNIT:	4178
APPLN. NO.:	10/613,868	EXAMINER:	Ingvoldstad, Bennett
FILED:	July 5, 2003	CONFIRMATION #:	6264
TITLE:	**ENFORCEMENT OF PLAYBACK COUNT IN SECURE HARDWARE FOR PRESENTATION OF DIGITAL PRODUCTIONS**		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action mailed from the U.S. Patent and Trademark Office on **July 18, 2008**, Applicant requests review of the final rejection in the above-identified application. This request is being filed with a Notice of Appeal and required fee. The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 50-2117.

No amendments are being filed with this request. The review is requested for the reasons stated in the remarks below.

Status of Claims

Claims 1-32 are pending in this application. In the final Office Action dated July 18, 2008, claims 1-12, 14-16, 18-27, and 29-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harada (US 2007/0198859) in view of Swix (US 6609253). Claims 13 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harada in view of Swix, further in view of Hammons (US 2006/0080727). Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Harada in view of Swix, further in view of De Lang (US 6020912).

REMARKS

The rejections of claims 1-32 under 35 U.S.C. § 103(a) are respectfully traversed. Independent claims 1, 19, 31, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harada in view of Swix.

Independent claims 1, 19, 31, and 32 each recite measuring an actual cumulative or playback time "based on monitoring the rate at which a requesting process makes requests for decryption of the electronic presentation." This is a feature that is not disclosed or taught by Harada. Harada merely discloses usage condition information that has information that limits an accumulated amount of time that a decrypted content is played back. (See, e.g., Harada at [0075]). As the final Office Action acknowledges, at page 4, "Harada does not disclose measuring the actual cumulative time 'based on monitoring the rate at which a requesting process makes requests for decryption of the electronic presentation'."

The Examiner contends that this feature is disclosed by Swix:

> Swix discloses a method for measuring an actual cumulative time of playback in order to restrict playback wherein the measurement of the cumulative time is based on monitoring the mode of playback; i.e., when different trick modes are selected, the cumulative time is adjusted differently. Figures 2, 3, and related description. Different modes are effectively the same as different playback rates; for example, monitoring that the mode is fast-forward is the same as monitoring that the rate of playback is 8 times the normal rate. Swix col. 3, l. 5-11.

(Office Action, p. 4.) Applicant respectfully traverses this argument. Monitoring a "rate at which a requesting process makes requests for encryption" is not the same as monitoring "that the rate **of playback** is 8 times the normal rate" (emphasis added).

Applicants therefore submit that independent claims 1, 19, 31, and 32, as amended, are not obvious over Harada in view of Swix, and respectfully request that the rejection of claims 1, 19, 31, and 32 under 35 U.S.C. § 102(e) should be withdrawn.

Further, Applicant respectfully submits that none of the cited references, alone or in any combination, disclose measuring an actual cumulative or playback time "based on monitoring the rate at which a requesting process makes requests for decryption of the electronic presentation," as recited by amended independent claims

1, 19, 31, and 32. For at least the reasons set forth above and the further reasons discussed below (with regard to the Office Action's rejection of claim 17), Applicants respectfully request that independent claims 1, 19, 31, and 32, as amended, be passed to allowance.

With respect to claim 17, Applicants submit that claim 17 is patentable not only because it depends from patentable base claim 1, but also because claim 17 is patentable over the Examiner's proposed combination of Harada in view of Swix, and further in view of U.S. Pat. No. 6,020,912 (De Lang), which is discussed in the Office Action at pages 2 and 15-16.

The Office Action (at page 15, item 9) states regarding claim 17 that "Harada in view of Swix does not further disclose: determining whether a mode is being used by monitoring the rate at which a requesting process makes requests for decryption."

Applicants agree with the Examiner that both Harada and Swix fail to disclose the claimed feature. However, the Office Action appears to rely upon De Lang for disclosure of the claimed feature. Applicants respectfully traverse the Office Action's characterization of De Lang as disclosing "determining whether a mode is being used by monitoring the rate at which a requesting process makes requests for decryption."

The Office Action cites a portion of De Lang as disclosing that "the playback device monitors the **price rate** of the decryption request to determine which playback modes are allowed to be used" (emphasis added). Applicants respectfully submit that monitoring a **price rate** does not disclose or teach, and is not analogous to, the Applicants' claimed feature of measuring an actual cumulative or playback time "based on monitoring the **rate at which a requesting process makes requests for decryption** of the electronic presentation" (emphasis added), as recited in the independent claims 1, 19, 31, and 32.

De Lang is directed to a video-on-demand system for transmitting a selected television signal along with means for playing back the television signal in one of a plurality of playback modes. The playback modes are defined by operating data. For example, a television program interrupted by commercials may be provided with operating data rendering fast display possible. Such operating data is selectable by a user and a higher price may be charged for such television programs. See De Lang, abstract, col. 1, lines 1-10 and 40-60. Thus, Applicant's "rate at which a requesting process makes requests for decryption" cannot be equated to De Lang's price rate.

The **price** that is disclosed in De Lang is neither a speed rate nor a timing rate, but merely a monetary price; that is, an "amount to be charged" (col. 1., lines 57-58). Nowhere does De Lang use the word "rate" to describe this price.

Further, Applicants' independent claims, as amended, recite "**monitoring** the rate at which a requesting process makes requests for decryption" (emphasis added). At most, De Lang discloses user selectable operating data, where the operating data define various user interfaces (playback modes), each set of operating data being downloadable at different prices. See De Lang, abstract and col. 1, lines 54-60. De Lang fails to disclose determining whether a playback mode is being operated by "monitor[ing] the price rate" (Office Action, p. 16). Contrary to the implication in the Office Action, De Lang does not disclose or teach determining "whether a mode is being used" by "monitor[ing] the price rate" (Office Action, p. 16); rather, De Lang merely discloses that certain "available playback modi" [*sic*] may be offered at certain prices (col. 1, line 34-64).

Further, Applicants respectfully submit that none of the cited references, alone or in any combination, disclose measuring an actual cumulative or playback time "based on monitoring the rate at which a requesting process makes requests for decryption of the electronic presentation," as recited by independent claims 1, 19, 31, and 32. Accordingly, Applicants respectfully submit that independent claims 1, 19, 31, and 32 are patentable over the cited art and should be passed to allowance.

Claims not specifically mentioned above are allowable due to their dependence on an allowable base claim. Dependent claims 2-18 depend from and include all the limitations of independent claim 1. Dependent claims 20-29 depend from and include all the limitations of independent claim 19. Therefore, Applicants respectfully request reconsideration of dependent claims 2-18 and 20-29 and requests the withdrawal of the rejections under 35 U.S.C. § 103(a).

In light of the arguments presented above, it is respectfully submitted that all pending claims are in condition for allowance. Reconsideration and withdrawal of the final rejection of the claimed invention is respectfully requested.

Respectfully submitted,
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